

HOUSE BILL NO. 26

INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PUBLIC RECREATIONAL ACCESS TO STREAMS AND RIVERS FROM A COUNTY BRIDGE AND ITS RIGHT-OF-WAY; PROVIDING FOR THE ERECTION, MAINTENANCE, AND REPLACEMENT OF A LEGAL FENCE IN THE RIGHT-OF-WAY IF THE FENCE IS ATTACHED TO THE COUNTY BRIDGE; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CONDITION RECREATIONAL ACCESS AT COUNTY BRIDGES AND TO IMPOSE REASONABLE REQUIREMENTS ON A FENCE AND ON ATTACHMENT OF THE FENCE TO A COUNTY BRIDGE; PROVIDING FOR PUBLIC PAYMENT OF THE COSTS OF SPECIAL FENCING CONDITIONS; PROVIDING FOR PROPOSALS FOR THE IMPROVEMENT AND ENHANCEMENT OF RECREATIONAL ACCESS OVER OR THROUGH A LEGAL FENCE WITHIN THE RIGHT-OF-WAY AT A COUNTY BRIDGE; PROVIDING FOR APPEAL OF A DECISION OF A BOARD OF COUNTY COMMISSIONERS REGARDING RECREATIONAL ACCESS AT A COUNTY BRIDGE TO THE DISTRICT COURT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose -- intent. The purpose of [sections 1 through 4] is to clarify that access to a stream or river at a county bridge crossing is by the full road and its full right-of-way to the water.

NEW SECTION. Section 2. Stream and river water access location. (1) Except as provided in subsection (5) and subject to [section 3], a person may gain access to a stream or river for recreational use by using a county bridge, road, and its right-of-way to the water.

(2) (a) If a controversy arises over the use of recreational access to a stream or river at a county bridge, the board of county commissioners shall, upon petition by either party, convene and conduct hearings and take any action necessary, including marking of an access route and modification and removal of fences, barriers, and impediments to reasonable recreational access to the stream or river.

(b) The board, by a reasonable exercise of its police powers and without a hearing, may also condition the recreational access for purposes of public safety.

(c) A majority vote of the board is required for any decision made pursuant to this subsection (2).

(3) The board of county commissioners shall render a final decision within 30 days of the conclusion of any hearing convened pursuant to subsection (2)(a). If recreational access is conditioned without a hearing pursuant to subsection (2)(b), the board shall render a final decision within 60 days of the date a petition is filed with the board.

(4) Within 30 days of a final decision of the board of county commissioners pursuant to subsection (3), either party may appeal the decision to the district court for a trial de novo.

(5) Recreational access to a stream or river from a county road or bridge that is created by prescription is dependent on the use of the road, bridge, and right-of-way, if any, during the prescription period.

NEW SECTION. Section 3. Fences within county road right-of-way -- legal fence requirement. (1)

An existing legal fence constructed for livestock control, as defined in 81-4-101, except an electric fence, and the point of attachment to a county bridge may be maintained, repaired, and replaced with a similar fence.

(2) A landowner shall request authorization from the board of county commissioners to attach a new legal fence for livestock control, as described in subsection (1), to a county bridge within the county road right-of-way. The fence and its attachment must be only as restrictive as necessary to control livestock and must be as least restrictive to public access as is reasonable. The board may impose reasonable requirements on the fence and on attachment of the fence, including enhanced access to the stream. The cost of any special conditions imposed additional to the cost of a legal fence described in subsection (1) must be borne by the department and not the landowner.

(3) A fence that does not meet the definition of a legal fence in 81-4-101 and that is attached to a county bridge within the county road right-of-way is considered a barrier under 23-2-311, and a person desiring recreational access to a stream or river may portage or go around the illegal fence.

NEW SECTION. Section 4. Proposal for enhancement of stream access -- notice and hearing. (1)

Any interested person or group or the department may propose to improve and enhance recreational access over or through a legal fence that is attached to a county bridge within the county road right-of-way. Costs for the construction, maintenance, and repair of any improvement or enhancement may not be ascribed to the owner of the fence but must be borne by the department. The department may accept money from any interested person or group for improving or enhancing recreational access pursuant to this subsection and shall administer the

1 money through the fund created in 87-1-611. The improvement or enhancement may not in any way compromise
2 the purpose for which the fence was constructed.

3 (2) (a) A proposal to improve and enhance recreational access pursuant to subsection (1) must be
4 presented to the owner of the fence. The proposal must be in writing, and the fence owner has 10 days to
5 evaluate the proposal.

6 (b) If the proposal is rejected, the interested person or group or the department may petition the board
7 of county commissioners for a hearing on the proposal, and the board shall hold a hearing on the petition. Notice
8 of the hearing must be provided to the fence owner at least 10 days prior to the date set for the hearing. The
9 fence owner has the right to be present at the hearing and to offer testimony and evidence concerning the
10 proposal.

11 (c) The board shall render a final decision on the petition within 30 days after the hearing. Within 30 days
12 of a final decision of the board, either party may appeal the decision to the district court for a trial de novo.

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14 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified
15 as an integral part of Title 23, chapter 2, part 3, and the provisions of Title 23, chapter 2, part 3, apply to [sections
16 1 through 4].

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18 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

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